

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

IN RE THE WENDY'S COMPANY
SHAREHOLDER DERIVATIVE ACTION

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) **C.A. No. 1:16-cv-01153-TSB**
) **Judge Timothy S. Black**
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**ORDER GRANTING DEFENDANTS' MOTION TO LIFT SEAL OF CARACCI'S
COMPLAINT AND CERTAIN EXHIBITS AND TO MAINTAIN SEAL OF
CONFIDENTIAL EXHIBITS**

This matter having come before the Court on Defendants Nelson Peltz, Peter W. May, Emil J. Brolick, Clive Chajet, Edward P. Garden, Janet Hill, Joseph A. Levato, J. Randolph Lewis, Peter H. Rothschild, David E. Schwab II, Roland C. Smith, Raymond S. Troubh, Jack G. Wasserman, Michelle J. Mathews-Spradlin, Dennis M. Kass, Matthew Peltz, Tod A. Penegor, Robert D. Wright, and nominal Defendant The Wendy's Company ("Wendy's") (collectively "Defendants"), Motion to Lift Seal of Caracci's Complaint and Certain Exhibits and to Maintain Seal of Confidential Exhibits (the "Motion"). No party opposed the motion. Having considered the Motion, the Court hereby ORDERS:

(1) Exhibits B-E, H-K, and M-O to Plaintiff Thomas Caracci's Complaint (the "Confidential Exhibits") shall be permanently sealed. The Court makes the following factual findings and conclusions in support of this ruling:

- a. The disclosure of the Confidential Exhibits would work a clearly defined and potentially serious injury to Wendy's because such documents contain confidential and highly sensitive business information, including trade secrets, and reflect confidential information regarding Wendy's cybersecurity risks,

procedures, assessments and programs, as detailed on a document-by-document basis on pages 5-6 of the Motion;

- b. The business information contained in the Confidential Exhibits, if disclosed, would allow competitors access to Wendy's business strategies, which constitutes a compelling reason against public disclosure;
- c. Public disclosures regarding Wendy's cybersecurity practices and protections would potentially expose the Company – and the sensitive information that comes across the Company's data systems, including customer personal identifying information – to serious threats from criminal actors, which constitutes a compelling reason against public disclosure;
- d. The aforementioned compelling reasons against public disclosure outweigh the public interest in access to the Confidential Exhibits under the circumstances of this case because (i) Plaintiff Thomas Caracci's Complaint to which the Confidential Exhibits are attached is no longer operative and, as ordered herein, is public; (ii) the operative Consolidated Complaint has been filed publicly; and (iii) Defendants and Plaintiff James Graham have agreed to permit Wendy's shareholders to review in-person the books and records contained in the Confidential Exhibits for purposes of evaluating the parties' proposed settlement of this matter, subject to such shareholders' execution of a confidentiality agreement;
- e. The seal is narrowly tailored such that only the documents with respect to which the Court has concluded that compelling reasons outweigh the presumption in favor of public disclosure shall be permanently sealed.

(2) The seal previously ordered over Plaintiff Thomas Caracci's Complaint and Exhibits A, F, G, L, P, Q, and R thereto is lifted.

IT IS SO ORDERED.

4/15/19
Date

Timothy S. Back
UNITED STATES DISTRICT JUDGE